

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

DATA CLOUD TECHNOLOGIES, LLC,  
Plaintiff,

v.

CHARTER COMMUNICATIONS, INC.,  
Defendant.

CIVIL ACTION NO. 6:21-cv-00662-ADA

**DATA CLOUD TECHNOLOGIES, LLC OPPOSITION TO  
DEFENDANT CHARTER COMMUNICATIONS, INC.'S MOTION TO DISMISS  
PURSUANT TO FRCP 12(b)(3) AND 12(b)(6)**  
[Dkt. No. 10]

Plaintiff DATA CLOUD TECHNOLOGIES, LLC (hereinafter, “DataCloud”) provides herein its Opposition to the “Motion To Dismiss Pursuant To FRCP 12(b)(3) AND 12(b)(6)” filed by Defendant CHARTER COMMUNICATIONS, INC. (hereinafter, “Charter”) on September 23, 2020 (Dkt. No. 10; the “Motion to Dismiss”) in lieu of answering DataCloud’s Complaint after having waived service (Dkt. No.7) and having sought and received an extension (*see* Dkt. No. 9). DataCloud opposes Charter’s Motion on the grounds that it is now moot with the timely filing of DataCloud “First Amended Complaint” (Dkt. No. 18) which was filed pursuant to Fed. R. Civ. P. 15. “A party may amend a pleading once as a matter of course, . . . if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier..” *See* Fed. R. Civ. Proc. 15(a)(1)(B). Under Fifth Circuit law, an amended complaint supersedes the original complaint filed, rendering it a nullity. *See Potter v. Cardinal Health 200, LLC*, 381 F.Supp.3d 729, 734 (E.D. Tex. 2019) (*citing Bosarge v. Miss. Bureau of Narcotics*, 796 F.3d 435, 440 (5th Cir. 2015) and *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994)).

Therefore, DataCloud requests that Charter's Motion to Dismiss (Dkt. No. 10) be denied as moot.

Dated: October 7, 2021

Respectfully submitted,

/s/ Jonathan R. Miller

**HENINGER GARRISON DAVIS, LLC**

James F. McDonough, III \*

Jonathan R. Miller \*

Travis E. Lynch \*

3621 Vinings Slope, Suite 4320

Atlanta, Georgia 30339

Telephone: (404) 996-0869, -0863, -0867

Facsimile: (205) 547-5502, -5506, -5515

Email: jmcdonough@hgdlawfirm.com

Email: jmiller@hgdlawfirm.com

Email: tlynch@hgdlawfirm.com

**ROZIER & HARDT, PLLC**

Jonathan Hardt (TX 24039906)\*

1105 Nueces Street, Suite A

Austin, Texas 78701

Telephone: (210) 289-7541

Email: hardt@rh-trial.com

*Attorneys for Plaintiff DataCloud Technologies, LLC*

\* admitted to W.D. Tex.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 7th day of October, 2021 I caused to be electronically-filed the foregoing document with the Clerk of Court using the Court's CM/ECF system. As such, this document was served on all counsel who are deemed to have consented to electronic service.

/s/ Jonathan R. Miller  
Jonathan R. Miller